

TITLE 327 WATER POLLUTION CONTROL BOARD

LSA Document #01-96

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On August 14, 2002, the water pollution control board (board) conducted the first public hearing/board meeting concerning the development of amendments to 327 IAC 5 , and new rule 327 IAC 15-13. Comments were made by the following parties:

Bethlehem Steel Burns Harbor (BSBH)
GRW Engineers (GRWE)
Indiana Association of Cities and Towns (IACT)
Indiana Manufacturers Association (IMA)
Indiana Water Quality Coalition (IWQC)
Monroe County Highway Department (MCHD)
Save the Dunes Council (SDC)

Following is a summary of the comments received and IDEM's responses thereto.

Comment: MCHD supports the rule and recommends that it be adopted. They agree that the emphasis on erosion control for construction sites is much needed. Yet, they have some concerns about lawn fertilizers, pesticides, herbicides, and discharge of water from swimming pools since the rule does not require them to adopt a local ordinance for them. They suggested that some of these things are unenforceable, therefore, not much time and effort should be spent on them. (MCHD)

Response: The regulation of dechlorinated swimming pool discharges is conditionally required by the rule. If an MS4 entity does not determine swimming pool discharges to be a significant impact on storm water quality, swimming pool discharges do not need to be regulated. As it relates to former clause (H), pesticide and fertilizer usage must be addressed for municipal operations. The application of pesticides and fertilizers by individual homeowners and commercial businesses is not regulated under this rule. The rule simply requires education of homeowners and commercial businesses on ways they can reduce their impact on storm water quality, which includes the proper usage and disposal of pesticides and fertilizers.

Comment: They felt that the rules seem to be ahead of science and since nonpoint source is a big problem, do not agree with having a rule stating that nonpoint source pollution will be removed without knowing how to do it. They stated that due to geographical features of Monroe County having a lot of sinkholes that they could not comply with the specific language in section 16(c)(2) and groundwater quality standards. They support adoption of the rule by the board but would request some additional review regarding the issue of sinkholes (MCHD)

Response: Ground water quality standards are applicable to any discharger with the potential to impact the ground water. The rule means that direct flows of storm water into a sinkhole or other subsurface pathway must meet the applicable standards.

Comment: They felt that IDEM should be a facilitating agency for this rule as more education was needed on storm water quality issues. They also felt that the local, state, and federal government should work together on this. They emphasized that they would like to have ownership of these programs and would like to view the program in more positive light. They suggested that since this was a new program, a periodic review with the MS4 operators, a written summary of the review, and information exchange would be beneficial. (MCHD)

Response: With most new rules, the agency will be a facilitator to interpret and guide compliance. The agency has an existing Rule 13 web page, and, as information is obtained during the program's implementation, relevant and useful information may be added to the web page. According to the federal "Economic Analysis of the Final Phase II Storm Water Rule" dated October 1999, many benefits will be realized by the new storm water rule, including reduced impacts to human health, aquatic life and wildlife, reduced sedimentation of receiving waters, reduced degradation and destruction of benthic habitat and organisms, increased photosynthetic activity, and increased attainment of designated uses for receiving waters.

Comment: BSBH was pleased with the new version of the rule which had been revised after taking their comments on section 5-4-6 into consideration. They credited the board and IDEM for working to improve the rule. BSBH still had some concerns with section 5-4-6 as they felt that it does not distinguish between general permits and individual permits. They believe that the new language would unintentionally force some facilities into a general permit by eliminating the current option of applying for an individual permit. They felt that IDEM would still have the authority to deny the application with justification so the option should be kept for the few who were able to take advantage of it. The other issue was that the current language appears to require a facility to obtain an individual permit as well as a general permit in some circumstances. They felt that this result was unintended, therefore, IDEM could easily change the language before final adoption, and they supported preliminary adoption of the rule. (BSBH)

IMA and IWQC thanked the agency for their hard work on the rule and indicated that they had sent in their comments and were hopeful that those changes could be realized before final adoption. They felt that the changes they had submitted on 5-4-6 had been looked upon with some favor and were hoping that after discussing with the larger group that they may be incorporated into the rule. On 5-4-6(b), they agree with BSBH, that general permit coverage could be required where all of them are subject to NPDES coverage. Another concern was that the agency might be limited to look at general permitting requirements for the issuance of general permits. Regarding Rule 13, they acknowledged that the rule was better than when it started out. They hope to get it further improved before it is brought back to the board. (IMA, IWQC)

Response: The rule language has been clarified to indicate differences between individual

permits and general permits. The agency's process for obtaining NPDES permit coverage has always been to encourage the use of general permits. For storm water discharge permittees, a hierarchy of permitting has been established in 327 IAC 5-4-6. The simplest and most desired approach to permitting storm water discharges is via a general permit. If the general permit is not adequate to meet water quality standards or does not appropriately reflect a permittee's specific situations, an individual storm water permit is the next step. Because of the inadequacies of general permit conditions, an individual permit will be more specific, and typically more stringent, than a general permit. Because of additional agency workload considerations, the agency does not want permittees to apply for individual permits unless the agency has determined the need for such action.

Comment: IACT expressed their appreciation to IDEM staff for working with them on revisions to the rule language, and the board for delaying adoption of the rule. They stated that most of their concerns had been addressed, however, they still had a few concerns related to the urbanized area maps and the addition of new MS4 communities, when the census maps were released, which would not be until November. The definition of a UA would cause more municipalities to be added, therefore the rule should be further revised to give the additional municipalities a one-year extension from the availability of the 2000 census maps to submit their NOI. (IACT)

Response: In November 2002, the U.S. Census Bureau has updated maps available based on the 2000 data.. Once this U.S. Census Bureau data is converted at the agency to a GIS layer, the agency will mail notification letters to newly designated MS4 entities by the end of December 2002. Most of the potential new designees have been verbally notified by the agency when the preliminary urbanized area maps became available in August 2002. The rule language has been changed to reflect a three hundred sixty-five (365) day timetable for newly designated applications. This timetable allows sufficient time for a newly designated MS4 entity to discuss cooperative efforts with adjacent MS4 entities, obtain legally-binding agreements, and submit a complete Notice of Intent letter.

Comment: IACT stated that the rule states that all known receiving waters including all water bodies with discharge must be listed on the NOI, which could be very cumbersome for the initial application since the definition of "water body" includes ditches, swales, and ponds. They suggested that such facilities should be included in the five-year inventory requirement. (IACT)

Regarding the baseline characterization report, the broad definition of "receiving waters" causes the analysis to be very cumbersome. (IACT)

Response: The rule has been revised to include the gradual listing and characterization of all receiving waters. A requirement to provide updated receiving water information was added to the annual reporting section.

Comments: IACT feels that the rule should incorporate waivers for small municipalities

which is allowed by the federal regulation. Since IDEM has chosen not to include the waiver provision in the rule, many small communities will be forced to comply with the rule requirements at a high cost to them, which they might not be able to absorb. They hope that their remaining concerns will be addressed before final adoption of the rule. (IACT)

GRWE stated for clarification that they are aware of several communities in the state that have populations as low as one thousand (1,000), that are on the list. There are several that are under five thousand (5,000), too. The comment was in reference to the previous comment on specific instances where people would apply for waivers. (GRWE)

On the subject of waivers, they support the position of IACT. (IMA, IWQC)

Response: The agency has added language to section 3(f) of the rule referencing the two situations where federal waivers are allowed: (1) MS4 entities with populations under 1,000 people within mapped urbanized areas; and (2) MS4 entities with populations under 10,000 people.

Comment: They are concerned with all the three storm water rules - 5, 6 and 13. They have concerns with Rule 13 which is a municipal rule, yet would impact the industrial community. They believe that going beyond the federal requirements is understandable, if appropriate. They believe that the reason for going beyond federal regulations needs to be covered. As an example they stated that 15-13-14 requires screening of outfalls. However, there is no definition of the term "outfall" in the rule, though IDEM indicated that the definition would be included in a guidance. There is no federal definition of "outfall", therefore they are concerned that administrative law is being developed on unfinished federal documents. (IMA, IWQC)

Response: The rule language includes a definition of "outfall" for the sake of clarity. Some means of investigating storm water outfalls within the MS4 area is necessary for determining illicit discharges and connections. The rule does not limit the investigation to outfall screening, but allows for other means. The screening, as referenced in 40 CFR 122.34(b)(3)(i), (ii), and (iv), is federally recommended: "visually screening outfalls during dry weather and conducting field tests of selected pollutants as part of the procedures for locating priority areas."

Comment: As another example, 15-13-16 requires MS4s to implement planning measures that include maximization of open space and the direction of physical growth. They believe that in Indiana, this provision would be a matter of local decision. (IMA, IWQC)

Response: The rule language regarding requirements in 327 IAC 15-13-16(b) has been changed from "must also include...." to "may also include.....". The rule requirements related to land use planning are important components of overall MS4 area storm water program planning. Federal language in 40 CFR 122.34(b)(5)(ii)(A) and (iii) references appropriate non-structural BMPs and includes directing growth to identified areas, protecting sensitive areas, and maintaining and/or increasing open space. Appropriate land use planning should provide more natural (or man-

made) filtration and settling areas, thus improving storm water quality while protecting areas that can not handle the added storm water pollutants.

Comment: They do not believe the requirements should extend to picking up litter and dog parks, as that is more prescriptive than the federal requirements, including promotion of recycling to reduce litter, minimization of pesticide and fertilizer use, and requiring all canine parks to be located at least 150 feet from a surface water body. They hope to work with the agency on these observations. They do encourage preliminary adoption and hope for a positive conclusion at final adoption. (IMA, IWQC)

Response: Rule language has been revised to remove litter pick-up, and provide canine parks as an example of recommended animal waste control. Because it was not directly related to reducing the amount of litter in storm water run-off, the reference to recycling in clause (G) was deleted. However, the reference to a minimum setback distance for canine parks has a potential effect of improving storm water quality. This setback distance may not be applicable to every regulated MS4 entity, and, where not applicable, does not need to be implemented. In applicable situations, the setback distance should improve overall water quality by reducing bacteria colonies in receiving waters.

Comment: SDC credited the department on giving the regulated community numerous opportunities to comment, including holding at least two video conferences. They urge the board to preliminarily adopt the proposed amendments to the rule. Regarding the statement of purpose for Rule 13, they recommend adding a sentence stating that these rules are a necessary next step in efforts to preserve, protect and improve our water resources. (SDC)

Response: The current rule language addresses what the rule is intended to accomplish (i.e., establish requirements for MS4 conveyance discharges so that public health, existing water uses, and aquatic biota are protected), and not the rule's role as one step in a process.

Comment: They are concerned that IDEM will lack the resources to implement or assist in carrying out this rule. They urged the board to start a separate rulemaking for adoption of fees to carry out the rule in a timely fashion. (SDC)

Response: IDEM has identified resources to implement this program and continues to pursue a variety of options to ensure resources are available.

Comment: Regarding public comment and review of some general permits issued under 327 IAC 15, IDEM has removed the appeal procedure in order to decrease the processing time. IDEM's response stated that the information would be stored in IDEM's storm water database which will be readily accessible for public inquiries. They urged the board to make sure the department carries out this commitment. (SDC)

Response: The agency has existing Rule 5 and Rule 6 storm water databases, and a federal

grant has been obtained to create an overall storm water database for the two existing storm water rules and Rule 13. The implementation of the new database will likely occur with the effective dates of the storm water rules.

Comment: Definitions (42), (49), (52), (70), (73), and (86), need minor revisions for clarity. (SDC)

Response: Appropriate changes have been made to the definitions to provide clarity.

Comment: Since 327 IAC 15-13-8(f) appears to be the first mention of an annual report, consider referencing 327 IAC 15-13-18 here. (SDC)

Response: The rule language was revised to provide reference to the annual report in section 18 of this rule.

Comment: 327 IAC 15-13-14(c), 327 IAC 15-13-15(b) and 327 IAC 15-13-16(b) still use the term “ordinance”.

Response: The term “ordinance” already exists in sections 14, 15, and 16.